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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

STEVEN GONZALEZ and GIANA
PADILLA on behalf of themselves and all
others similarly situated and aggrieved,

Plaintiffs,

v.

H&M HENNES & MAURITZ L.P., a
Domestic limited partnership; ALYSE
DIGILDO, an individual; and DOES 1
through 100, inclusive

Defendants.

CASE NO.: 30-2021-01217029-CU-OE-
CXC

[Assigned to the Hon. William Claster in
Dept. CX101]

**AMENDED CLASS AND PAGA
SETTLEMENT AGREEMENT**

Action Filed: August 18, 2021

Trial Date: None Set

1 This Amended Class Action and PAGA Settlement Agreement (“Settlement,”
2 “Agreement” or “Settlement Agreement”) is made by and between Plaintiffs STEVEN
3 GONZALEZ AND GIANA PADILLA (“Plaintiffs”) and Defendant H&M FASHION USA,
4 INC., previously known as H&M HENNES & MAURITZ L.P, (“Defendant”). The Agreement
5 refers to Plaintiffs and Defendant collectively as “Parties,” or individually as “Party.”

6 **1. DEFINITIONS**

7 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations and civil
8 penalties under California Private Attorneys’ General Act of 2004, California Labor Code § 2698
9 *et seq.* (“PAGA”), against Defendants, captioned *Steven Gonzalez and Giana Padilla v. H&M*
10 *Hennes & Mauritz L.P. and Alyse Digildo*, Case No. 30-2021-01217029-CU-OE-CXC, initiated
11 on August 18, 2021, and pending in Superior Court of the State of California, County of Orange.

12 1.2. “Administrator” means ILYM Group, Inc. the neutral entity Plaintiffs have agreed to
13 appoint to administer the Settlement.

14 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid
15 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance
16 with the Administrator’s “not to exceed” bid submitted to the Court in connection with
17 Preliminary Approval of the Settlement.

18 1.4. “Aggrieved Employees” means all retail workers currently or formerly employed by
19 Defendant, either directly or through any subsidiary, staffing agency, or professional employer
20 organization, as non-exempt employees during the PAGA Period in the State of California.

21 1.5. “Class” or “Settlement Class” means all retail workers currently or formerly employed
22 by Defendants, either directly or through any subsidiary, staffing agency, or professional
23 employer organization, as non-exempt employees during the Class Period in the State of
24 California.

25 1.6. “Class Counsel” means David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group,
26 P.C.

27 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean
28

the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action.

1.8. "Class Data" means Class Member identifying information in Defendants' custody, possession, or control, including the Class Member's (1) name; (2) last known address(es); (3) last four digits of the last known Social Security Number(s); and (4) the dates of employment (i.e., hire dates, and, if applicable, re-hire date(s) and/or separation date(s)).

1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

1.10. "Class Member Address Search" means the Administrator's investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

1.11. "Class Notice" means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

1.12. "Class Period" means the period from August 18, 2017 through November 6, 2024.

1.13. "Class Representative" means the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as a Class Representative.

1.14. "Class Representative Incentive Award" means the payment to the Class Representative for initiating the Action and providing services in support of the Action.

1.15. "Court" means the Superior Court of California, County of Orange.

1.16. "Defendant" means named Defendant H&M Fashion USA, Inc. (previously known as H&M HENNES & MAURITZ L.P.).

1.17. "Defense Counsel" means Andrew L. Satenberg and Zoe Ginsberg of Manatt, Phelps & Phillips, LLP.

1.18. “Effective Date” means the later of: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final the day after the deadline for filing a notice of appeal (i.e. 61st day after entry of the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.21. “Final Judgment” means the Judgment entered by the Court based upon the Final Approval.

1.22. “Gross Settlement Amount” means \$7,500,000.00 (Seven Million Five Hundred Thousand Dollars and Zero Cents) which is the total amount Defendant agrees to pay under the Settlement, except as provided in Paragraph 8.1 below and any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Expenses Payment, Class Representative Incentive Award, and Administrator’s Expenses.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.

1.25. “Judgment” means the judgment entered by the Court based upon Final Approval.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA

under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Incentive Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1.30. “Operative Complaint” means the Second Amended Complaint filed in the Action on February 5, 2024.

1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee was employed by Defendant for at least one day during the PAGA Period, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

1.32. “PAGA Period” means the period from August 18, 2020 through November 6, 2024.

1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

1.34. “PAGA Notice” means Plaintiffs’ October 13, 2021, letter to Defendant and the LWDA, providing notice pursuant to Labor Code section 2699.3 subd. (a).

1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount (\$200,000.00), allocated 25% to the Aggrieved Employees (\$50,000.00) and 75% to the LWDA (\$150,000.00) in settlement of PAGA claims.

1.36. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.37. “Plaintiffs,” “Named Plaintiffs,” or “Class Representative” means Steven Gonzalez and Giana Padilla, the named Plaintiffs in the Action.

1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.39. “Preliminary Approval Order” means the proposed Order granting Preliminary Approval

and Approval of PAGA Settlement.

1.40. “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.

1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 5.4 below.

1.42. “Released Parties” means: Defendant, and each of their former, present and future owners, parents, and subsidiaries, and all of their current, former, and future officers, directors, members, managers, employees, consultants, partners, shareholders, joint venturers, agents, predecessors, successors, assigns, accountants, insurers, reinsurers, and/or legal representatives, including but not limited to H&M HENNES & MAURITZ L.P.

1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.44. “Response Deadline” means forty-five (45) days after the Administrator mails Notice to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) mail Requests for Exclusion from the Settlement, or (b) mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 15 days beyond the Response Deadline has expired.

1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.46. “Workweek” means any week (i.e. 7-day period) during which a Class Member was employed by Defendant for at least one day in a non-exempt position during the Class Period in California, based on hire dates, re-hire dates (as applicable), and termination dates (as applicable).

2. RECITALS

2.1. On August 18, 2021, Mr. Gonzalez filed his Class Action Complaint for damages in the Superior Court of the State of California for the County of Orange, Case No. 30-2021-01217029-

CU-OE-CXC.Mr. Gonzalez alleged violations, including but not limited to, failure to give compliant meal and rest breaks, to pay meal and rest break premiums, to pay overtime, to provide accurate wage statements, to pay minimum wage, to pay all due wages upon termination, failure to indemnify and unfair competition.

2.2. On August 18, 2021, Mr. Gonzalez also filed a notice with the Labor and Workforce Development Agency (“LWDA”) to seek civil penalties for various Labor Code violations.

2.3. On October 27, 2023, Mr. Gonzalez filed a representative action complaint under the Private Attorney’s General Act Labor Code section 2699 in the State of California for the County of Alameda, Case No. 21CV001252, alleging, among other things: failure to pay overtime and minimum wages; failure to provide meal breaks, rest breaks, or compensation in lieu thereof; waiting time penalties; wage statement violations; failure to indemnify work expenses; failure to comply with paid sick leave laws; and unfair competition.

2.4. On April 19, 2022, Plaintiff filed a First Amended Complaint in the instant action seeking civil penalties under the Private Attorney’s General Act Labor Code section 2699.

2.5. On February 5, 2024, Plaintiff filed a Second Amended Complaint adding another allegedly aggrieved employee and purported class representative, Giana Padilla, as a named plaintiff.

2.6. Thereafter, the Parties conducted formal discovery and also agreed to exchange informal discovery and attend mediation.

2.7. Prior to the mediations, Plaintiffs obtained, through informal discovery: (a) a 10% sampling of time and payroll records for Class Members and Aggrieved Employees; (b) all policy documents related to the claims in this case; and (c) Plaintiffs’ personnel file.

2.8. Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2.9. On July 18, 2023, the Parties participated in an all-day mediation presided over by Mark S. Rudy, Esquire. The mediation was unsuccessful, but the Parties continued settlement negotiations for the next several months with the aid of the mediator.

2.10. On November 6, 2024, the Parties attended a second all-day mediation, also presided over by Mark S. Rudy, Esquire, which led to the Parties reaching an agreement to settle the Action.

2.11. The Court has not granted class certification.

2.12. As part of the Settlement, the Parties agree Plaintiff shall dismiss, without prejudice, any and all claims against defendant Alyse Digildo (“Ms. Digildo”). Defendant represents that Ms. Digildo is a Class Member and as such Plaintiffs agree dismissal of any claims against her is appropriate for approval purposes

3. MONETARY TERMS

3.1. Gross Settlement Amount. Defendant promises to pay \$7,500,000.00 as the Gross Settlement Amount, unless increased pursuant to Paragraph 8.1 of this Agreement, and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiffs: Class Representative Incentive Award to Plaintiffs in the amount of \$7,500.00 to each Plaintiff, for a total of \$15,000.00, in addition to any Individual Class Payment and any Individual PAGA Payment Plaintiffs are entitled to receive as a Participating Class Member. Defendant will not oppose Plaintiffs’ request for a Class Representative Incentive Award that does not exceed this amount. Plaintiffs will seek

1 Court approval for any Class Representative Incentive Award prior to the Final
2 Approval Hearing. If the Court approves a Class Representative Incentive Award less
3 than the amount requested, the Administrator will retain the remainder in the Net
4 Settlement Amount and shall be distributed to Participating Class Members as part of
5 their Individual Settlement Payment. The Administrator will pay the Class
6 Representative Incentive Award using IRS Form 1099. Plaintiffs assume full
7 responsibility and liability for any applicable employee taxes owed on the Class
8 Representative Incentive Award.

9 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than thirty five
10 percent (35%) of the Gross Settlement Amount, which, unless escalated pursuant to
11 Paragraph 8.1 of this Agreement, is currently estimated to be \$2,625,000.00 and a Class
12 Counsel Litigation Expenses Payment of not more than \$85,000.00. Defendant will not
13 oppose requests for these payments provided that they do not exceed these amounts.
14 Plaintiffs and/or Class Counsel will endeavor to file a motion for Class Counsel Fees
15 Payment and Class Litigation Expenses Payment prior to the Final Approval Hearing.
16 If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation
17 Expenses Payment less than the amounts requested, the Administrator will allocate the
18 remainder to the Net Settlement Amount. Released Parties shall have no liability to
19 Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion
20 any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.
21 The Administrator will pay the Class Counsel Fees Payment and Class Counsel
22 Expenses Payment using one or more IRS 1099 Forms. Class Counsel assume full
23 responsibility and liability for taxes owed on the Class Counsel Fees Payment and the
24 Class Counsel Litigation Expenses Payment and holds Defendant harmless, and
25 indemnifies Defendant, from any dispute or controversy regarding any division or
26 sharing of any of these Payments. There will be no additional charge of any kind to
27 either the Settlement Class Members or request for additional consideration from
28

Defendant for such work unless, Defendant materially breaches this Agreement, including any term regarding funding, and further efforts are necessary from Class Counsel to remedy said breach, including, without limitation, moving the Court to enforce the Agreement. Should the Court approve attorneys' fees and/or litigation costs and expenses in amounts that are less than the amounts provided for herein, then the unapproved portion(s) shall be a part of the Net Settlement Amount.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$71,950.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$71,950.00 the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks.

3.2.4.1. Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 90% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution

to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$200,000.00 to be paid from the Gross Settlement Amount, with 75% (\$150,000.00) allocated to the LWDA PAGA Payment and 25% (\$50,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$50,000.00 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS

4.1. Class Workweeks and PAGA Pay Periods. Based on a review of its records to date, Defendant estimates there are approximately 19,694 Class Members who collectively worked a total of 1,020,974 Workweeks, and 13,873 Aggrieved Employees who worked a total of 351,909 PAGA Pay Periods.

4.2. Class Data. Not later than 14 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty

to immediately notify Class Counsel if they discover that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.3. Funding of Gross Settlement Amount. Defendant shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes by transmitting the funds to the Administrator no later than six (6) months after the Effective Date.

4.4. Within 7 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments, and the Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment in each installment. Before mailing any checks, the

1 Settlement Administrator must update the recipients' mailing addresses using the
2 National Change of Address Database.

3 4.4.2. The Administrator must conduct a Class Member Address Search for all Class
4 Members whose checks are returned undelivered without USPS forwarding address.
5 Within 7 days of receiving a returned check the Administrator must re-mail checks to
6 the USPS forwarding address provided or to an address ascertained through the Class
7 Member Address Search. The Administrator need not take further steps to deliver
8 checks to Class Members whose re-mailed checks are returned as undelivered. The
9 Administrator shall promptly send a replacement check to any Class Member whose
10 original check was lost or misplaced, requested by the Class Member prior to the void
11 date.

12 4.4.3. For any Class Member whose Individual Class Payment check or Individual
13 PAGA Payment check is uncashed and cancelled after the void date, the Administrator
14 shall transmit the funds represented by such checks to the California State Unclaimed
15 Property Fund, thereby leaving no "unpaid residue" subject to the requirements of
16 California Code of Civil Procedure section 384, subd. (b).

17 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall
18 not obligate Defendant to confer any additional benefits or make any additional
19 payments to Class Members (such as 401(k) contributions or bonuses) beyond those
20 specified in this Agreement.

21 **5. RELEASE OF CLAIMS**

22 Effective upon entry of Judgment, the Order granting Final Approval of this Settlement,
23 and on the date after Defendant fully funds the Gross Settlement Amount and all employer
24 payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs, Class
25 Members, and Class Counsel will release claims against all Released Parties as follows:

26 5.1. Plaintiffs' Release. Plaintiffs and their respective former and present spouses,
27 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
28

1 and discharge Released Parties from all claims, transactions, or occurrences, including, but not
2 limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts
3 contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could
4 have been, alleged based on facts contained in the Operative Complaint and Plaintiffs' PAGA
5 Notice ("Plaintiffs' Release.") Plaintiffs' Release does not extend to any claims or actions to
6 enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability
7 benefits, social security benefits, workers' compensation benefits that arose at any time, or based
8 on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover
9 facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe
10 to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all
11 respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

12 5.1.1. Plaintiffs' Waiver of Rights Under California Civil Code Section 1542. For
13 purposes of Plaintiffs' Release only, Plaintiffs expressly waive and relinquish the
14 provisions, rights, and benefits, if any, of section 1542 of the California Civil Code,
15 which reads:

16 A general release does not extend to claims that the creditor or
17 releasing party does not know or suspect to exist in his or her favor
18 at the time of executing the release, and that if known by him or
her would have materially affected his or her settlement with the
debtor or Released Party.

19 5.2. Release of Class Claims: For the duration of the Class Period, all Participating Class
20 Members, on behalf of themselves and their respective former and present representatives,
21 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all
22 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the
23 Operative Complaint including, but not limited to: (1) failure to properly pay overtime wages
24 under California Labor Code sections 200-204, 206, 206.5, 207, 210, 216, 218, 218.5, 218.6, 221,
25 223, 510, 558, 1194, 1197, 1197.1, 1198, and 1199, as well as applicable Wage Orders, including
26 IWC Wage Order No. 7-2001, section 3; (2) failure to pay minimum wages under California Labor
27 Code sections 204, 210, 216, 558, 218.6, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, and 1199,
28 as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 4, IWC Wage

Order No. 5-2001, and California Code of Regulations, Title 8, section 1100 *et seq.*; (3) failure to provide meal periods and properly pay meal period premiums, under California Labor Code sections 218.6, 226, 226.7, 510, and 512, as well as applicable Wage Orders, including IWC Order No. 7-2001, section 11; (4) failure to provide rest periods and properly pay rest period premiums, under California Labor Code sections 218.6, 226, 226.7, and 512, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 12, and Civil Code section 3287 and 3288; (5) waiting time penalties under California Labor Code sections 201, 202, 203, and 218.6, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, § 12; (6) wage statement violations, including intentional failure to comply with itemized employee wage statement provisions, under California Labor Code sections 226, 1174, 1175, and 1174.5, as well as applicable Wage Orders, including IWC Wage Order No. 7-2001, section 7; (7) failure to timely pay wages under California Labor Code sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 218.5, 218.6, 226.3, 226.7, 510, 1194, and 1197.5 as well as applicable IWC Wage Orders; (8) failure to indemnify under California Labor Code section 2802 and applicable IWC Wage Orders; (9) all claims asserted through California Business & Professions Code sections 17203 and 17200, *et seq.* arising out of the Labor Code violations referenced in the Operative Complaint, as well as California Code of Civil Procedure section 1021.5; (10) failure to maintain required records under California Labor Code sections 226 and 1174, and IWC Wage Order No. 7-2001, section 7; (11) failure to comply with California Sick Pay Requirements under California Labor Code sections 246, 247.5 and 248.5.

5.3. Except as set forth in Section 5.2 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.4. Release of PAGA Claims: For the duration of the PAGA Period and to the extent permitted by law, the LWDA and the State of California, by and through Plaintiffs as an agent and proxy of the LWDA, release the Released Parties from all claims for PAGA penalties that

1 were alleged, or reasonably could have been alleged, based on the facts stated in the Operative
2 Complaint and the PAGA Notice. This includes, but is not limited to, claims for the following
3 causes of action:

4 5.4.1. Failure to Timely Pay Wages under California Labor Code sections 201.3, 204,
5 204b, 204.1, 205, 205.5, 210, and 1197.5;

6 5.4.2. Failure to provide meal periods under California Labor Code sections 218.6, 226,
7 226.7, 510, and 512, as well as applicable Wage Orders, including IWC Order No. 7-
8 2001, section 11;

9 5.4.3. Failure to authorize and permit rest periods under California Labor Code sections
10 218.6, 226, 226.7, and 512, as well as applicable Wage Orders, including IWC Wage
11 Order No. 7-2001, section 12 ;

12 5.4.4. Failure to properly pay meal period and rest break premiums under California
13 Labor Code sections 226.7, and 512.

14 5.4.5. Intentional Failure to Provide Itemized Wage Statements under California Labor
15 Code sections 226, 1174, 1174.5, 2699 *et seq.*;

16 5.4.6. Failure To Pay Wages Due Upon Termination under California Labor Code
17 sections 201, 202, 203, 256, 225.5, 227.3, 246, 247.5, 248.5 and 2698 *et seq.*;

18 5.4.7. Failure To Pay Minimum Wage under California Labor Code sections 203,
19 1197.1, 1197.2;

20 5.4.8. Failure To Pay Overtime At Regular Rate Of Pay under California Labor Code
21 sections 200-204, 206, 206.5, 207, 210, 216, 218, 218.5, 218.6, 221, 223, 510, 558,
22 1194, 1197, 1197.1, 1198, 2698 *et seq.*, Wage Order 7;

23 5.4.9. Failure to Provide Accurate Itemized Wage Statements and Violation of Record
24 Keeping Requirements under California Labor Code sections 226, 226.3, 432, 1174,
25 1174.5, 2699 *et seq.*;

26 5.4.10. Failure to Comply with California Sick Pay Requirements under California Labor
27 Code sections 246, 247.5, 248.5 and 2698 *et. seq.*;

1 5.4.11. Failure to Provide Suitable Seating under applicable Wage Orders;

2 5.4.12. Civil Penalties under California Labor Code section 2698 and 2699 *et seq.*,
3 including, without limitation, for all causes of action named in Paragraphs 5.2 and 5.4,
4 including, but not limited to, failure to pay the rates of pay and overtime rates of pay
5 applicable to their employment, allowances claimed as part of the minimum wage, the
6 regular payday designated by Defendant, the name of the employer, including any
7 “doing business as” names used, the name, address and telephone number of the
8 workers’ compensation insurance carrier, information regarding paid sick leave, and
9 other pertinent information required to be disclosed by employer under Labor Code
10 section 2810.5, failing to provide employee and other aggrieved employees with the
11 amount of paid sick leave required to be provided pursuant to California and local laws.

12 **6. MOTION FOR PRELIMINARY APPROVAL**

13 The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion
14 for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary
15 Approvals.

16 6.1. Within 7 days of full execution of this Agreement, Defendant will prepare and deliver to
17 Class Counsel a signed declaration from Defendant and Defense Counsel disclosing all facts
18 relevant to any actual or potential conflicts of interest with the Administrator and Cy Pres
19 Recipient

20 6.2. Plaintiffs’ Responsibilities. Plaintiffs will prepare and endeavor to deliver to Defense
21 Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the
22 notice, and memorandum in support, of the Motion for Preliminary Approval that includes an
23 analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement
24 under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary
25 Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed
26 declaration from the Administrator attaching its “not to exceed” bid for administering the
27 Settlement and attesting to its willingness to serve; competency; operative procedures for
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1 protecting the security of Class Data; amounts of insurance coverage for any data breach,
2 defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of
3 interest with Class Members; and the nature and extent of any financial relationship with
4 Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming
5 willingness and competency to serve and disclosing all facts relevant to any actual or potential
6 conflicts of interest with Class Members; (v) a signed declaration from each Class Counsel firm
7 attesting to its competency to represent the Class Members; its timely transmission to the LWDA
8 of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd.
9 (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code
10 section 2699, subd. (1)(2)); and (vi) all facts relevant to any actual or potential conflict of interest
11 with Class Members and the Administrator.

12 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible
13 for expeditiously finalizing and filing the Motion for Preliminary Approval after the full
14 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
15 Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary
16 Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the
17 Administrator.

18 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for
19 Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
20 Defense Counsel will expeditiously work together on behalf of the Parties by meeting and
21 conferring, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary
22 Approval or conditions Preliminary Approval on any material change to this Agreement, Class
23 Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by
24 meeting and conferring, and negotiating in good faith, to modify the Agreement and otherwise
25 satisfy the Court's concerns.

26 **7. SETTLEMENT ADMINISTRATION**

27 7.1. Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve
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as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under U.S. Treasury Regulation section 468B-1.

7.4. Notice to Class Members

7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.

7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

7.4.3. Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice

1 using any forwarding address provided by the USPS. If the USPS does not provide a
2 forwarding address, the Administrator shall conduct a Class Member Address Search,
3 and re-mail the Class Notice to the most current address obtained. The Administrator
4 has no obligation to make further attempts to locate or send Class Notice to Class
5 Members whose Class Notice is returned by the USPS a second time.

6 7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks
7 and/or Pay Periods, and Requests for Exclusion will be extended an additional 15 days
8 beyond the 45 days otherwise provided in the Class Notice for all Class Members whose
9 notice is re-mailed. The Administrator will inform the Class Member of the extended
10 deadline with the re-mailed Class Notice.

11 7.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
12 discovers any persons who believe they should have been included in the Class Data
13 and should have received Class Notice, the Parties will expeditiously meet and confer,
14 in good faith, in an effort to agree on whether to include them as Class Members. If the
15 Parties agree, such persons will be Class Members entitled to the same rights as other
16 Class Members, and the Administrator will send, via email or overnight delivery, a Class
17 Notice requiring them to exercise options under this Agreement not later than 15 days
18 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
19 later.

20 7.5. Requests for Exclusion (Opt-Outs).

21 7.5.1. Class Members who wish to exclude themselves from (opt-out of) the Class
22 Settlement must send the Administrator, by mail, a signed written Request for Exclusion
23 not later than 45 days after the Administrator mails the Class Notice (plus an additional
24 15 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion
25 is a letter from a Class Member or his/her representative, signed by the Class Member,
26 that reasonably communicates the Class Member's election to be excluded from the
27 Settlement and includes the Class Member's name, signature, the last four digits of their
28

1 Social Security Number, address, and email address or telephone number. To be valid,
2 a Request for Exclusion must be timely postmarked by the Response Deadline.

3 7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it
4 fails to contain all the information specified in the Class Notice. The Administrator
5 shall accept any Request for Exclusion as valid if the Administrator can reasonably
6 ascertain the identity of the person as a Class Member and the Class Member's desire
7 to be excluded. The Administrator's determination shall be final and not appealable or
8 otherwise susceptible to challenge. If the Administrator has reason to question the
9 authenticity of a Request for Exclusion, the Administrator may demand additional proof
10 of the Class Member's identity. The Administrator's determination of authenticity shall
11 be final and not appealable or otherwise susceptible to challenge.

12 7.5.3. In the event that more than one hundred and seventy-five (175) Class Members
13 opt out of the settlement of the class-action claims, Defendant will have the right to
14 rescind and terminate the Settlement without prejudice to its pre-settlement positions
15 and defenses in the Action, including as to its assertion that class certification is not
16 appropriate. Defendant shall have ten (10) business days from notice of the 175 (or
17 more) opt-outs to exercise its discretion under this Paragraph. If Defendant elect to
18 rescind the Settlement, they shall be responsible for all administration costs incurred
19 through the date of rescission.

20 1.1.1. Every Class Member who does not submit a timely and valid Request for
21 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled
22 to all benefits and bound by all terms and conditions of the Settlement, including the
23 Participating Class Members' Releases under Paragraphs 5.2 and 5.4 of this Agreement,
24 regardless whether the Participating Class Member actually receives the Class Notice or
25 objects to the Settlement.

26 1.1.2. Every Class Member who submits a valid and timely Request for Exclusion is a
27 Non-Participating Class Member and shall not receive an Individual Class Payment or
28

1 have the right to object to the class action components of the Settlement. Because future
2 PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-
3 Participating Class Members who are Aggrieved Employees are deemed to release the
4 claims identified in Paragraph 5.4 of this Agreement and are eligible for an Individual
5 PAGA Payment.

6 1.2. Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after
7 the Administrator mails the Class Notice (plus an additional 15 days for Class Members whose
8 Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods
9 (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge
10 the allocation by communicating with the Administrator via mail. The Administrator must
11 encourage the challenging Class Member to submit supporting documentation. In the absence
12 of any contrary documentation, the Administrator is entitled to presume that the Workweeks
13 contained in the Class Notice are correct so long as they are consistent with the Class Data. The
14 Administrator's determination of each Class Member's allocation of Workweeks and/or Pay
15 Periods shall be final and not appealable or otherwise susceptible to challenge. The
16 Administrator shall promptly provide copies of all challenges to calculation of Workweeks
17 and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination
18 the challenges.

19 1.3. Objections to Settlement

20 1.3.1. Only Participating Class Members may object to the class action components of
21 the Settlement and/or this Agreement, including contesting the fairness of the
22 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
23 Counsel Litigation Expenses Payment and/or Class Representative Incentive Award.

24 1.3.2. Participating Class Members may send written objections to the Administrator, by
25 mail. In the alternative, Participating Class Members may appear in Court (or hire an
26 attorney to appear in Court) to present verbal objections at the Final Approval Hearing.
27 A Participating Class Member who elects to send a written objection to the
28

1 Administrator must do so not later than 45 days after the Administrator's mailing of the
2 Class Notice (plus an additional 15 days for Class Members whose Class Notice was re-
3 mailed).

4 1.3.3. Non-Participating Class Members have no right to object to any of the class action
5 components of the Settlement.

6 1.4. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be
7 performed or observed by the Administrator contained in this Agreement or otherwise.

8 1.4.1. Website, Email Address and Toll-Free Number. The Administrator will maintain
9 and use an internet website to post information of interest to Class Members including
10 the date, time and location for the Final Approval Hearing and copies of the Settlement
11 Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
12 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment,
13 Class Counsel Litigation Expenses Payment and Class Representative Incentive Award,
14 the Final Approval and the Judgment. The Administrator will also maintain and monitor
15 an email address and a toll-free telephone number to receive Class Member calls and
16 emails.

17 1.4.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will
18 promptly review on a rolling basis Requests for Exclusion to ascertain their validity.
19 Not later than 5 days after the expiration of the deadline for submitting Requests for
20 Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
21 containing (a) the names and other identifying information of Class Members who have
22 timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and
23 other identifying information of Class Members who have submitted invalid Requests
24 for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted
25 (whether valid or invalid).

26 1.4.3. Weekly Reports. The Administrator must, on a weekly basis, provide written
27 reports to Class Counsel and Defense Counsel that, among other things, tally the number
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of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

1.4.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

1.4.5. Administrator’s Declaration. Before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

1.4.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in

1 Court attesting to its disbursement of all payments required under this Agreement. Class
2 Counsel is responsible for filing the Administrator's declaration in Court.

3 **2. CLASS SIZE ESTIMATES AND ESCALATOR CLAUSE**

4 Based on its records, Defendant estimates that, as of the date of this Settlement
5 Agreement, (1) there are 19,694 Class Members and 1,020,974 Total Workweeks during the
6 Class Period and (2) there are 13,873 Aggrieved Employees who worked 351,909 Pay Periods
7 during the PAGA Period.

8 8.1 Increase in Workweeks. Defendant represents that there are approximately 1,020,974
9 Workweeks worked during the Class Period. In the event the number of Workweeks worked
10 increases during the Class Period by more than 10%, or an additional 102,097 Workweeks, then,
11 at Defendant's election: (1) the Gross Settlement Amount shall be increased proportionally by
12 the Workweeks worked in excess of 1,123,071 (1,020,974 Workweeks + 102,097 Workweeks)
13 multiplied by the Workweek Value; or (2) the Class Period shall be reduced in order to ensure
14 that the Workweeks do not exceed 1,123,071. The Workweek Value shall be calculated by
15 dividing the Gross Settlement Amounts by 1,020,974. The Parties agree that the Workweek
16 Value amounts to \$7.35 per Workweek (\$7,500,000 / 1,020,974 Workweeks). Thus, for
17 example, should there be 1,200,000 Workweeks in the Class Period, then, if Defendant elects
18 option 1 above, the GFV shall be increased by \$565,428.15. (1,200,000 Workweeks – 1,123,071
19 Workweeks) x \$7.35/Workweek.) Defendant shall have ten (10) business days from receiving
20 notice that there are greater than 1,123,071 Workweeks to exercise its election; otherwise, it will
21 be assumed that Defendant has exercised Option (1).

22 **3. MOTION FOR FINAL APPROVAL**

23 Prior to the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for
24 final approval of the Settlement that includes a request for approval of the PAGA settlement
25 under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed
26 Judgment (collectively "Motion for Final Approval"). Plaintiffs shall endeavor to provide drafts
27 of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class
28

Counsel and Defense Counsel will expeditiously meet and confer, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

3.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

3.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Incentive Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

3.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

3.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the

1 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
2 the amount of the Net Settlement Amount.

3 3.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
4 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
5 modification of this Agreement (including, but not limited to, the scope of release to be granted
6 by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
7 expeditiously work together in good faith to address the appellate court's concerns and to obtain
8 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
9 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
10 the Court's award of the Class Representative Incentive Award or any payments to Class Counsel
11 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
12 as long as the Gross Settlement Amount remains unchanged.

13 **4. AMENDED JUDGMENT**

14 10.1 If any amended judgment is required under the Code of Civil Procedure section 384, the
15 Parties will work together in good faith to jointly submit a proposed amended judgment.

16 **5. ADDITIONAL PROVISIONS**

17 5.1. No Admission of Liability, Class Certification or Representative Manageability for Other
18 Purposes. This Agreement represents a compromise and settlement of highly disputed claims.
19 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
20 any of the allegations in the Operative Complaint have merit or that Defendant has any liability
21 for any claims asserted; nor should it be intended or construed as an admission by Plaintiffs that
22 Defendant's defenses in the Action have merit. The Parties agree that class certification and
23 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
24 grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to
25 contest certification of any class for any reasons, and Defendant reserves all available defenses
26 to the claims in the Action, and Plaintiffs reserve the right to move for class certification on any
27 grounds available and to contest Defendant's defenses. The Settlement, this Agreement and
28

1 Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
2 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement
3 and this Agreement).

4 5.2. Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendant and
5 Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement
6 is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit
7 another person to disclose, disseminate or publicize, any of the terms of the Agreement directly
8 or indirectly, specifically or generally, to any person, corporation, association, government
9 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
10 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
11 extent necessary to report income to appropriate taxing authorities; (4) in response to a court
12 order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
13 government agency. Each Party agrees to immediately notify each other Party of any judicial or
14 agency order, inquiry, or subpoena seeking such information. Plaintiffs, Class Counsel,
15 Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any
16 conversation or other communication, before the filing of the Motion for Preliminary Approval,
17 any with third party regarding this Agreement or the matters giving rise to this Agreement except
18 to respond only that "the matter was resolved," or words to that effect. This paragraph does not
19 restrict Class Counsel's communications with Class Members in accordance with Class
20 Counsel's ethical obligations owed to Class Members.

21 5.3. No Solicitation. The Parties separately agree that they and their respective counsel and
22 employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
23 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
24 ability to communicate with Class Members in accordance with Class Counsel's ethical
25 obligations owed to Class Members.

26 5.4. No Publicity. Class Counsel shall not include information about this case on its website
27 and shall not actively seek publicity in connection with the settlement of this case.
28

1 5.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement
2 together with its attached exhibits shall constitute the entire agreement between the Parties
3 relating to the Settlement, superseding any and all oral representations, warranties, covenants, or
4 inducements made to or by any Party.

5 5.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and
6 represent that they are authorized by Plaintiffs and Defendant, respectively, to take all
7 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
8 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
9 terms of this Agreement including any amendments to this Agreement.

10 5.7. Cooperation. The Parties and their counsel will cooperate with each other and use their
11 best efforts, in good faith, to implement the Settlement by, among other things, modifying the
12 Settlement Agreement, submitting supplemental evidence and supplementing points and
13 authorities as requested by the Court. In the event the Parties are unable to agree upon the form
14 or content of any document necessary to implement the Settlement, or on any modification of the
15 Agreement that may become necessary to implement the Settlement, the Parties will seek the
16 assistance of a mediator and/or the Court for resolution.

17 5.8. No Prior Assignments. The Parties separately represent and warrant that they have not
18 directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
19 encumber to any person or entity and portion of any liability, claim, demand, action, cause of
20 action, or right released and discharged by the Party in this Settlement.

21 5.9. No Tax Advice. Neither Plaintiffs, Class Counsel, Defendant nor Defense Counsel are
22 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
23 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR
24 Part 10, as amended) or otherwise.

25 5.10. Modification of Agreement. This Agreement, and all parts of it, may be amended,
26 modified, changed, or waived only by an express written instrument signed or agreed to by all
27 Parties or their representatives, and approved by the Court. Plaintiff and Defendant expressly
28

1 agree that should the Parties agree to amend, modify, change, or waive this Agreement, or any
2 part of it, Class Counsel and Defense Counsel are authorized to submit to the Court any
3 amendments of this Agreement, amended Agreements, or amendments to the Agreement, on
4 behalf of the Parties once fully executed, which includes, but is not limited to, authorization of
5 the use of signatures previously provided by the Parties.

6 5.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to
7 the benefit of, the successors of each of the Parties.

8 5.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
9 governed by and interpreted according to the internal laws of the State of California, without
10 regard to conflict of law principles.

11 5.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of
12 this Agreement. This Agreement will not be construed against any Party on the basis that the
13 Party was the drafter or participated in the drafting

14 5.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered
15 during Action and in this Agreement relating to the confidentiality of information shall survive
16 the execution of this Agreement

17 5.15. Use of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code
18 §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant
19 in connection with the mediation, other settlement negotiations, or in connection with the
20 Settlement, may be used only with respect to this Settlement, and no other purpose, and may not
21 be used in any way that violates any existing contractual agreement, statute, or rule of court.

22 5.16. Headings. The descriptive heading of any section or paragraph of this Agreement is
23 inserted for convenience of reference only and does not constitute a part of this Agreement.

24 5.17. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall
25 be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
26 weekend or federal legal holiday, such date or deadline shall be on the first business day
27 thereafter.
28

1 5.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
2 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
3 of this Agreement shall be accepted as an original. All executed counterparts and each of them
4 will be deemed to be one and the same instrument if counsel for the Parties will exchange between
5 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
6 prove the existence and contents of this Agreement.

7 5.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
8 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
10 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

12 5.20. Severability. In the event that one or more of the provisions contained in this Agreement
13 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
14 illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel
15 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
16 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
17 Agreement.

18
19 **IT IS SO AGREED:**

20
21 
22 Steven Gonzalez (Jun 30, 2025 16:24 PDT)

23
24 Plaintiffs, STEVEN GONZALEZ

For Defendant, H&M FASHION USA, INC.

25
26
27
28 Plaintiffs, GIANA PADILLA

AGREED AS TO FORM ONLY:

Vedang J. Patel

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiffs

Andrew Satenberg
Counsel for Defendant

1 5.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
2 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
3 of this Agreement shall be accepted as an original. All executed counterparts and each of them
4 will be deemed to be one and the same instrument if counsel for the Parties will exchange between
5 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
6 prove the existence and contents of this Agreement.

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8 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
10 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

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13 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
14 illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel
15 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
16 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
17 Agreement.

18
19 **IT IS SO AGREED:**

Adam Valko






20
21
22 _____
Plaintiffs, STEVEN GONZALEZ

For Defendant, H&M FASHION USA, INC.

23
24 _____
Plaintiffs, GIANA PADILLA

1 **AGREED AS TO FORM ONLY:**

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3 David D. Bibiyan
4 Vedang J. Patel
Counsel for Plaintiffs


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Andrew Satenberg
Counsel for Defendant

1 5.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts
2 by facsimile, electronically (i.e., DocuSign, AdobeSign, or similar), or email which for purposes
3 of this Agreement shall be accepted as an original. All executed counterparts and each of them
4 will be deemed to be one and the same instrument if counsel for the Parties will exchange between
5 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
6 prove the existence and contents of this Agreement.


7 5.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the
8 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
9 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend
10 the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
11 process.

12 5.20. Severability. In the event that one or more of the provisions contained in this Agreement
13 shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity,
14 illegality, or unenforceability shall in no way effect any other provision if Defendant's Counsel
15 and Class Counsel, on behalf of the Parties and the Settlement Class, mutually elect in writing
16 to proceed as if such invalid, illegal, or unenforceable provision had never been included in this
17 Agreement.

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19 **IT IS SO AGREED:**

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22 _____
Plaintiffs, STEVEN GONZALEZ

For Defendant, H&M FASHION USA, INC.

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24 _____
Giana Padilla (Jul 1, 2025 16:35 PDT)
25 Plaintiffs, GIANA PADILLA